

PART 153—CRIMINAL JURISDICTION OVER CIVILIANS EMPLOYED BY OR ACCOMPANYING THE ARMED FORCES OUTSIDE THE UNITED STATES, CERTAIN SERVICE MEMBERS, AND FORMER SERVICE MEMBERS

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SOURCE: 71 FR 8947, Feb. 22, 2006, unless otherwise noted.

§ 153.1 Purpose.

This part:

(a) Implements policies and procedures, and assigns responsibilities under the Military Extraterritorial Jurisdiction Act of 2000, as amended by section 1088 of the “Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005,” October 28, 2004 (hereinafter referred to as “the Act”) for exercising extraterritorial criminal jurisdiction over certain military personnel, former service members of the United States Armed Forces, and over civilians employed by or accompanying the Armed Forces outside the United States (U.S.).

(b) Implements section 3266 of the Act.

§ 153.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard by agreement with the Department of Homeland Security when it is not operating as a Service of the Department of the Navy), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as “the DoD Components”). The term

“Military Services,” as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

(b) *Coast Guard.* The Coast Guard ordinarily operates as a separate branch of the Armed Forces in the Department of Homeland Security (DHS). However, upon Presidential Directive, the Coast Guard operates as a Service within the Department of the Navy and becomes part of the Department of Defense. By agreement with the Secretary of the Department of Homeland Security, when the Coast Guard is operating as a separate Service within the DHS, this part shall apply to the Coast Guard to the extent permitted by the Act. Whether a provision of this Instruction applies to a Coast Guard case is determined by whether the Coast Guard is operating as a Service in the DHS or as a Service within the Department of the Navy.

(c) While some Federal criminal statutes are expressly or implicitly extraterritorial, many acts described therein are criminal only if they are committed within “the special maritime and territorial jurisdiction of the United States” or if they affect interstate or foreign commerce. Therefore, in most instances, Federal criminal jurisdiction ends at the nation’s borders. State criminal jurisdiction, likewise, normally ends at the boundaries of each State. Because of these limitations, acts committed by military personnel, former service members, and civilians employed by or accompanying the Armed Forces in foreign countries, which would be crimes if committed in the U.S., often do not violate either Federal or State criminal law. Similarly, civilians are generally not subject to prosecution under the Uniform Code of Military Justice (UCMJ), unless Congress had declared a “time of war” when the acts were committed. As a result, these acts are crimes, and therefore criminally punishable, only under the law of the foreign country in which they occurred. See section 2 of Report Accompanying the Act (Report to Accompany H.R. 3380, House of Representatives Report 106-778, July 20, 2000 hereafter referred to as “the Report Accompanying the Act”). While the U.S. could impose administrative discipline for such actions, the Act and

this part are intended to address the jurisdictional gap with respect to criminal sanctions.

(d) Nothing in this part may be construed to deprive a court-martial, military commission, provost court, or other military tribunal of concurrent jurisdiction with respect to offenders or offenses that by statute or the law of war may be tried by court-martial, military commission, provost court, or other military tribunal (Section 3261(c) of title 18). In some cases, conduct that violates section 3261(a) of the Act may also violate the UCMJ, or the law of war generally. Therefore, for military personnel, military authorities would have concurrent jurisdiction with a U.S. District Court to try the offense. The Act was not intended to divest the military of jurisdiction and recognizes the predominant interest of the military in disciplining its service members, while still allowing for the prosecution of members of the Armed Forces with non-military co-defendants in a U.S. District Court under section 3261(d) of the Act.

(e) This part, including its enclosures, is intended exclusively for the guidance of military personnel and civilian employees of the Department of Defense, and of the United States Coast Guard by agreement with the Department of Homeland Security. Nothing contained herein creates or extends any right, privilege, or benefit to any person or entity. See *United States v. Caceres*, 440 U.S. 741 (1979).

§ 153.3 Definitions.

Accompanying the Armed Forces Outside the United States. As defined in section 3267 of the Act, the dependent of:

- (1) A member of the Armed Forces; or
- (2) A civilian employee of the Department of Defense (including a non-appropriated fund instrumentality of the Department); or
- (3) A DoD contractor (including a subcontractor at any tier); or
- (4) An employee of a DoD contractor (including a subcontractor at any tier); and
- (5) Residing with such member, civilian employee, contractor, or contractor employee outside the United States; and

(6) Not a national of or ordinarily resident in the host nation.

Active Duty. Full-time duty in the active military service of the United States. It includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the Military Department concerned. See section 101(d)(1) of title 10, United States Code.

Armed Forces. The Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard. See section 101(a)(4) of title 10, United States Code.

Arrest. To be taken into physical custody by law enforcement officials.

Charged. As used in the Act and this part, this term is defined as an indictment or the filing of information against a person under the Federal Rules of Criminal Procedure. See the analysis to Section 3264 of the Report Accompanying the Act.

Civilian Component. A person or persons employed by the Armed Forces outside the United States, as defined in this section and section 3267(a)(1), as amended, of the Act. A term used in Status of Forces Agreements.

Dependent. A person for whom a member of the Armed Forces, civilian employee, contractor (or subcontractor at any tier) has legal responsibility while that person is residing outside the United States with or accompanying that member of the Armed Forces, civilian employee, contractor (or subcontractor at any tier), and while that responsible person is so assigned, employed or obligated to perform a contractual obligation to the Department of Defense. For purposes of this part, a person's "command sponsorship" status while outside the United States is not to be considered in determining whether the person is a dependent within the meaning of this part, except that there shall be a rebuttable presumption that a command-sponsored individual is a dependent.

Designated Commanding Officer (DCO). A single military commander in each foreign country where U.S. Forces are stationed and as contemplated by DoD Directive 5525.1, Status of Forces Policy and Information.